

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 994

Introduced by Assembly Member Lowenthal

February 22, 2013

An act to amend Section 1001 of, to repeal Sections 1001.7, 1001.8, and 1001.9 of, and to repeal and add Sections 1001.1, 1001.2, 1001.3, 1001.35, 1001.4, 1001.6, and 1001.50 of, and to add Section 1001.56 to, add Section 1385.2 to, and to add and repeal Chapter 2.85 (commencing with Section 1001.41) of Title 6 of Part 2 of the Penal Code, relating to diversion programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, as amended, Lowenthal. ~~Misdemeanor~~—*Postplea misdemeanor* diversion programs.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, for the person charged to participate in a diversion program for the treatment of problem drinking or alcoholism adjudication. Existing law requires the district attorney of each county annually to review any diversion program. Existing law prohibits a program from

continuing without the approval of the district attorney and prohibits a person from participating in a diversion program without the authorization of the district attorney.

This bill would require each ~~county~~ *prosecuting attorney* to establish and maintain a *postplea* misdemeanor diversion program, to be administered by the district attorney of that county, program within his or her jurisdiction and would authorize either the ~~district~~ *prosecuting attorney* or the superior court to offer diversion to a *first time misdemeanor* defendant, as specified. The program would specify the administrative procedures and who would be eligible for the *postplea* misdemeanor diversion program. *The bill would repeal these provisions as of January 1, 2019.* By requiring diversion programs in ~~additional counties~~ *local jurisdictions*, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.85 (commencing with Section 1001.41)
2 is added to Title 6 of Part 2 of the Penal Code, to read:

3

4 CHAPTER 2.85. POSTPLEA MISDEMEANOR DIVERSION

5

6 1001.41. (a) Each prosecuting attorney shall, within his or
7 her jurisdiction, establish a misdemeanor diversion program by
8 which a first time misdemeanor offender defendant may be offered,
9 at the discretion of the prosecuting attorney, diversion in lieu of
10 sentencing as provided in this chapter. The superior court of the
11 county where the underlying offense occurred may also offer the
12 defendant diversion in lieu of sentencing as provided in this
13 chapter.

1 (b) As used in this chapter, “postplea misdemeanor diversion”
2 means the postponing or terminating of sentencing for a
3 misdemeanor charge against a defendant who has entered a plea
4 of guilty or nolo contendere and who meets the criteria in Section
5 1001.42 upon completion of a diversion program. Postplea
6 misdemeanor diversion may not be used in officer hearings,
7 administrative hearings, mediation, dispute resolution programs,
8 or restorative justice programs.

9 (c) This chapter shall apply to first-time misdemeanor
10 defendants, except as provided in paragraph (2) of subdivision (b)
11 of Section 1001.42, in order to reduce the stigma that is often
12 associated with a criminal record and to increase the likelihood
13 that a defendant will be able to obtain employment following the
14 successful completion of diversion in lieu of sentencing, as provided
15 in this chapter.

16 (d) It is the intent of the Legislature that this chapter not be
17 construed to preempt other current or future pretrial or
18 precomplaint diversion programs. It is also the intent of the
19 Legislature that current or future posttrial diversion programs not
20 be preempted, except as provided in Section 13201 or 13352.5 of
21 the Vehicle Code.

22 1001.42. (a) The postplea misdemeanor diversion program
23 established by this chapter may be offered to a defendant, alleged
24 in an accusatory pleading to have committed a misdemeanor, at
25 his or her first appearance or within 20 calendar days of his or
26 her first appearance, whichever occurs later, unless a jury has
27 been empaneled, or except as specified in subdivision (b).

28 (b) Postplea misdemeanor diversion under this chapter shall
29 not be offered when any of the following are met:

30 (1) When the accusatory pleading charges the commission of
31 a misdemeanor for which any of the following apply:

32 (A) Incarceration would be mandatory upon conviction of the
33 defendant.

34 (B) Registration would be required upon conviction pursuant
35 to Section 290.

36 (C) The granting of probation is prohibited.

37 (D) The magistrate determines that the offense shall be
38 prosecuted as a misdemeanor pursuant to paragraph (5) of
39 subdivision (b) of Section 17.

1 (E) (i) Force or violence against a person or peace officer is
2 charged.

3 (ii) The unlawful use, possession, sale, or transfer of a
4 dangerous weapon, firearm, or ammunition is charged.

5 (F) The victim is a person identified in Section 6211 of the
6 Family Code or the victim is a minor or a dependent adult pursuant
7 to Section 368.

8 (G) A violation of Section 23152 of the Vehicle Code is charged.

9 (H) A violation of subdivision (c) of Section 192 or subdivision
10 (b) of Section 191.5 is charged.

11 (I) A violation of Section 186.22 is charged.

12 (J) A violation of Section 387 is charged.

13 (K) A violation of Section 6425 of the Labor Code is charged.

14 (L) A violation of environmental crimes is charged, including,
15 but not limited to, alleged violations of subdivision (a) of Section
16 5650 of the Fish and Game Code, Section 8670.64 of the
17 Government Code, Section 25507 of the Health and Safety Code,
18 and Section 13387 of the Water Code.

19 (2) The defendant has been convicted of any misdemeanor in
20 the previous 10 years, a misdemeanor involving force or violence,
21 or a felony.

22 (3) The defendant has previously been diverted pursuant to this
23 chapter or any other provision of law.

24 (4) The defendant is a partnership, firm, association,
25 corporation, limited liability company, or other legal entity.

26 (c) Nothing in this section is intended to preclude a defendant
27 from being offered postplea misdemeanor diversion pursuant to
28 this chapter when charged with a violation of Section 415.

29 (d) The prosecuting attorney may determine whether the
30 defendant is eligible for postplea misdemeanor diversion. If the
31 prosecuting attorney determines that the defendant is eligible for
32 postplea misdemeanor diversion, the prosecuting attorney shall
33 notify the defendant's attorney or the defendant if he or she is
34 appearing pro per of that determination.

35 (e) The notification required by subdivision (d) of this section
36 and subdivision (b) of Section 1001.44 shall include both of the
37 following:

38 (1) A full description of the procedures for postplea
39 misdemeanor diversion.

1 (2) *A clear statement that failure to perform a term or condition*
2 *of the program or to comply with a court order will result in*
3 *sentencing upon the original guilty or nolo contendere plea as if*
4 *diversion had not occurred.*

5 1001.43. (a) *A defendant who chooses to participate in the*
6 *postplea misdemeanor diversion program under this chapter shall*
7 *be required to complete each of the following in order to be deemed*
8 *to have successfully completed his or her postplea misdemeanor*
9 *diversion program:*

10 (1) *Enroll in and complete at least one of the following programs*
11 *approved by the prosecuting attorney:*

12 (A) *Counseling.*

13 (B) *Community service.*

14 (2) *Make full restitution.*

15 (3) *Comply with any court-ordered protective order, stay-away*
16 *order, or order prohibiting firearm possession for the time period*
17 *that would have been imposed upon conviction of the underlying*
18 *charge.*

19 (4) *Remedy any violation of any law, code, or regulation that*
20 *was the basis for consideration of the accusatory pleading.*

21 1001.44. (a) (1) *If the prosecuting attorney determines that*
22 *a defendant is not eligible for the postplea misdemeanor diversion*
23 *program, and if the defendant has entered a guilty plea or a plea*
24 *of nolo contendere, the court may, upon setting forth reasons on*
25 *the record for overruling the determination of the prosecuting*
26 *attorney, independently offer the defendant postplea misdemeanor*
27 *diversion pursuant to this chapter. Judicial plea bargaining is*
28 *prohibited.*

29 (2) *If no official court reporter is present and no electronic*
30 *recording equipment is used, the court shall have the reasons for*
31 *overruling the determination of the prosecuting attorney pursuant*
32 *to paragraph (1) entered in the minutes of the court.*

33 (b) *If the court determines that the defendant is eligible for*
34 *postplea misdemeanor diversion, the prosecuting attorney shall*
35 *notify the defendant's attorney or the defendant if he or she is*
36 *appearing pro per of that determination.*

37 (c) *Postplea misdemeanor diversion offered by the court under*
38 *this section shall conform to the requirements of Section 1001.42.*

1 (d) A court's order granting postplea misdemeanor diversion
2 under this section shall be appealable pursuant to paragraph (2),
3 (6), or (7) of subdivision (a) of Section 1466.

4 1001.45. (a) If a defendant owes restitution, the postplea
5 misdemeanor diversion program to which the defendant is referred
6 pursuant to this chapter shall establish procedures for the
7 collection and distribution of restitution to the victim or victims,
8 and the defendant shall provide proof of payment to the court.

9 (b) The procedures established pursuant to this section shall
10 include a provision that allows the administrator of the postplea
11 misdemeanor diversion program to, if the administrator determines
12 there to be good cause, request an extension whereby the defendant
13 would be granted additional time to repay the amount of restitution
14 ordered by the court.

15 1001.46. (a) In any case in which a defendant has fulfilled the
16 conditions of his or her postplea misdemeanor diversion pursuant
17 to this chapter, if the defendant is not serving a sentence for an
18 offense, is not on probation for an offense, and is not charged with
19 the commission of an offense, the court shall, pursuant to Section
20 1385.2, strike the defendant's plea of guilty or nolo contendere
21 and dismiss the action against the defendant. The defendant, except
22 as noted below, shall thereafter be released from all penalties and
23 disabilities resulting from the offense of which he or she was
24 granted postplea misdemeanor diversion, except as provided in
25 Section 13555 of the Vehicle Code. The defendant may indicate
26 in response to any question concerning his or her prior criminal
27 record that he or she was not arrested or diverted for the offense
28 and a record pertaining to an arrest resulting in a successful
29 completion of a postplea misdemeanor diversion program shall
30 not, without the defendant's consent, be used in any way that could
31 result in the denial of any employment, benefit, license, or
32 certificate except as specified in subdivision (c). However, in any
33 subsequent prosecution of the defendant for another offense, the
34 prior conviction may be pleaded and proved and shall have the
35 same effect as if postplea misdemeanor diversion had not been
36 granted or the accusation dismissed.

37 (b) Upon the dismissal of the defendant's accusations, the arrest
38 upon which the case was diverted shall be deemed to have never
39 occurred. The defendant shall be informed of his or her right, if
40 any, to petition for a certificate of rehabilitation and pardon.

1 (c) (1) *The defendant shall be informed that the dismissal does*
2 *not relieve him or her of the obligation to disclose the conviction*
3 *in response to a direct question contained in a questionnaire or*
4 *application for public office, for licensure by a state or local*
5 *agency, or for contracting with the California State Lottery*
6 *Commission.*

7 (2) *Dismissal of an accusation pursuant to this section does not*
8 *permit a person to own, possess, or have in his or her custody or*
9 *control a firearm, or prevent his or her conviction under Chapter*
10 *2 (commencing with Section 29800) of Division 9 of Title 4 of Part*
11 *6.*

12 (3) *Dismissal of an accusation underlying a conviction pursuant*
13 *to this section does not permit a person to hold public office if a*
14 *conviction for that offense would otherwise prohibit the holding*
15 *of that public office.*

16 (4) *The defendant shall be advised that, regardless of his or her*
17 *successful completion of a postplea misdemeanor diversion*
18 *program, the arrest upon which the case was diverted may be*
19 *disclosed by the Department of Justice in response to a peace*
20 *officer application request and that, notwithstanding subdivision*
21 *(a), this section does not relieve the defendant of the obligation to*
22 *disclose the arrest in response to a direct question contained in a*
23 *questionnaire or application for a position as a peace officer, as*
24 *defined in Section 830, or for a criminal justice agency, as defined*
25 *in Section 13101.*

26 1001.47. *Nothing in this chapter is intended to limit the rights*
27 *of a victim under Section 28 of Article I of the California*
28 *Constitution.*

29 1001.48. (a) *A postplea diversion program in existence as of*
30 *the effective date of this chapter shall be exempt from compliance*
31 *with the provisions of this chapter.*

32 (b) *Notwithstanding subdivision (a), the superior court of the*
33 *county in which the underlying offense occurred may offer the*
34 *defendant postplea misdemeanor diversion pursuant to this chapter.*
35 *If the defendant is diverted pursuant to this chapter, the program*
36 *shall comply with the provisions of this chapter.*

37 1001.49. *This chapter shall remain in effect only until January*
38 *1, 2019, and as of that date is repealed, unless a later enacted*
39 *statute, that is enacted before January 1, 2019, deletes or extends*
40 *that date.*

1 *SEC. 2. Section 1385.2 is added to the Penal Code, to read:*

2 *1385.2. The judge or magistrate shall, upon his or her motion*
3 *or upon the petition of the prosecuting attorney, and in the*
4 *furtherance of justice, order an action to be dismissed if the*
5 *defendant has fulfilled the conditions of his or her postplea*
6 *misdemeanor diversion pursuant to Chapter 2.85 (commencing*
7 *with Section 1001.41) of Title 6 of Part 2 of the Penal Code.*

8 *SEC. 3. If the Commission on State Mandates determines that*
9 *this act contains costs mandated by the state, reimbursement to*
10 *local agencies and school districts for those costs shall be made*
11 *pursuant to Part 7 (commencing with Section 17500) of Division*
12 *4 of Title 2 of the Government Code.*

13
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15 **All matter omitted in this version of the bill**
16 **appears in the bill as amended in the**
17 **Senate, June 25, 2013. (JR11)**
18